

### **REMARKS**

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-13, 27-37, 44, 45, 48-51 and 55-60 were pending prior to the Office Action. Claim 49 have been canceled and claims 1, 2, 4, 6, 10, 13, 34, 45, 48 and 50 have been amended through this Reply. Therefore, claims 1-13, 27-37, 44, 45, 48, 50, 51 and 55-60 are pending. Claims 1, 13-23, 27, 34, 38-46, 48, 50, 52, 53, 58 and 59 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

#### ***Interview Summary***

Applicants appreciate the time afforded by the Examiner and his supervisor in conducting the Interview on August 26, 2009. During the interview, Applicants' counsel informed the Examiner that the term "3-D intensity" within the context of the invention, and as defined in the instant specification at page 66, lines 20-29 (corresponding to paragraph [0251] of U.S. Pub. No. 2006/0126919), has a different connotation than that relied upon by the Examiner in his rejection. As recited in the specification, "[a]n index that denotes... a scale of the sense of solidity is referred to as '3-D intensity'." In other words, "3-D intensity" of a 3-D image relates to the amount that a 3-D image appears solid or 3-dimensional.

The Examiner has clearly supplied the Osaka and Favalora references based upon an erroneous interpretation of 3-D intensity as related to the brightness or luminance of the 3-D image. The Examiner seemed to appreciate that he is obligated to interpret the term "3-D intensity" in light of the definition of the term in the specification. *See MPEP § 2173.05(a)*. However, no agreement with respect to claim interpretation was reached during the interview.

In the interest of expediting prosecution, Applicants have amended the term "3-D intensity" in the application to recite "3-D effect intensity" in order to impress upon the Examiner the distinction between an interpretation of intensity as relating to brightness or luminance and an interpretation whereby the intensity of the *3-D effect* of a 3-D image is considered.

***Allowable Subject Matter***

Applicants appreciate that claims 27-37 are indicated to be allowable. Applicants further appreciate that claims 2-7, 9, and 11-12 are indicated to define allowable subject matter.

***35 U.S.C. § 112, 2nd Paragraph Rejection***

Claim 10 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Claim 10 has been amended to address the alleged lack of antecedent basis. Applicants respectfully request that the §112, second paragraph rejection of claim 10 be withdrawn.

***Claim Rejections - 35 U.S.C. §102***

Claims 1, 8, 10, 13, 44-45, 48-51, and 55-60 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 6,023,277 to Osaka ("Osaka"). Additionally, claims 1 and 44 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,936,767 to Favalora ("Favalora"). Applicants submit the Examiner has failed to establish a *prima facie* case of anticipation and traverse the rejection.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. §102, the cited reference must teach or suggest each and every element in the claims. *See M.P.E.P. §2131; M.P.E.P. §706.02*. Accordingly, if the cited reference fails to teach or suggest one or more claimed elements, the rejection is improper and must be withdrawn.

Osaka discloses a display control apparatus for presenting a 3-dimensional display. Osaka discloses recognizing whether 3-dimensional display is possible on a per-object basis, and also for providing such information as header information in a 3-D image file. *See Abstract; col. 5, lines 4-11*. Osaka also discloses using the persistence of vision effect to vary the depth of a plurality of luminance points such that an oscillating screen is not required. *See col. 5, lines 12-20*.

In this instance, the Examiner is interpreting the claimed limitation of "3-D intensity" to read on the luminance, or brightness, of a 3-dimensional image. *See Office Action, page 3*. Osaka discusses correcting the luminance to compensate for the decrease in aperture efficiency

resulting from an increase in the number of parallax viewpoints. *See Osaka, col. 27, line 58 – col. 28, line 6 as cited by the Examiner.*

However, the Examiner's interpretation of "3-D intensity" does not conform to the term's use in the context of the present application. The instant specification describes "3-D intensity" as relating to the amount of depth or solidarity of the 3-D image, i.e., how "intense" the 3-D effect of the image is to the viewer. *See e.g., instant specification, paragraph 251, et seq., citing the Application Publication No. 2006/0126919 A1.* According to one embodiment of the claimed invention, when the accumulative value of the 3-D intensity over time passes a threshold, the display may lessen the 3-D intensity or switch to 2-D display such that a viewer's fatigue may be minimized.

Neither Osaka nor Favalora appear to obviate the features of the claimed invention regarding the 3-D intensity. The Favalova reference is directed towards modulating the intensity of light sources according to the motion of the display target, among other factors. *See e.g., col. 1, line 65 – col. 2, line 24.* However, this intensity of light sources is not the same as the "3-D intensity" of a 3-D image. As previously discussed, since the instant specification provides a definition of what Applicants intend "3-D intensity" to mean, the Examiner may not rely on his broad interpretation of "intensity" as related to the luminance of the image. *See MPEP § 2173.05(a).*

Nevertheless, in the interest of expediting prosecution, Applicants have through this Reply amended the claims and specification to refer to "3-D effect intensity" to clarify that "intensity" refers to the amount of the 3-D effect within the 3-D image.

Again, Applicants submit that neither Osaka nor Favalova disclose at least this feature of the claimed invention. Therefore, at least because the prior art fails to teach or suggest each and every claimed element, independent claim 1 is distinguishable from the prior art. Independent claim 44 is likewise distinguishable at least for the reasons relied upon above with respect to claim 1. Dependent claims 8 and 10 are also distinguishable from the prior art at least due to their dependence from claim 1. Accordingly, Applicants respectfully request that the rejection of claims 1, 8, 10, and 44 under 35 U.S.C. § 102(b) be withdrawn.

With respect to independent claims 13, 45, 50, 55, 56, 58, and 59:

Claim 13 recites, *inter alia*, the feature “*wherein said display control part forms a 2-D image from said 3-D image according to a predetermined first condition, displays said formed 2-D image instead of said 3-D image, and displays said 3-D image instead of said 2-D image according to a predetermined second condition, wherein said predetermined first condition comprises one of a 3-D image display time or an accumulative intensity value of a 3-D effect intensity of the 3-D image being greater than or equal to a predetermined threshold value*”.

Osaka discloses setting the observation time for 3-D display. *See col. 28, line 46 – col. 29, line 9*. Osaka discloses that once the display time has elapsed, the user is alerted such that they may confirm whether to continue 3-D viewing. However, Osaka does not anticipate switching from 3-D to 2-D display based upon a 3-D image display time or when an accumulative intensity value of a 3-D effect intensity of the 3-D image passes a predetermined threshold value. At best, Osaka discloses displaying a 2-D display using the 2-D data of the 3-D image based upon the condition of a predetermined mouse event, such as when a mouse event is associated with showing a 3-D image in a particular window. *See col. 17, lines 10-63*. However, this is not the same as switching from 3-D to 2-D based on a 3-D display time or based on an accumulative intensity value, as claimed. Osaka is completely silent regarding a 3-D effect intensity value, much less an accumulative intensity value of a 3-D effect intensity.

Therefore, at least because Osaka fails to teach or suggest each and every claimed element, independent claim 13 is distinguishable from the prior art. Independent claims 45, 50, 55, 56, 58, and 59 are likewise distinguishable at least for the reasons relied upon above with respect to claim 13. Dependent claims 51, 57, and 60 are also distinguishable from the prior art at least due to their dependence from claims 50, 55, and 58. Accordingly, Applicants respectfully request that the rejection of claims 13, 45, and 50-51 and 55-60 under 35 U.S.C. § 102(b) be withdrawn.

With respect to independent claim 48:

Claim 48 recites, *inter alia*, the feature “*wherein said control information denotes that a 3-D image is displayed as a 2-D image in the case where said information takes a first value and*

*a 3-D image is displayed as a 2-D image or 3-D image in the case where said information takes a second value, wherein said control information includes information for denoting which of said plurality of images is to be used to form a display image in the case where a 3-D image is displayed as a 2-D image.”*

As previously discussed, Osaka discloses setting the observation time for 3-D display. *See col. 28, line 46 – col. 29, line 9.* Osaka discloses that once the display time has elapsed, the user is alerted such that they may confirm whether to continue 3-D viewing. However, Osaka fails to anticipate including information denoting which of the plurality of images are to be used to form a display image in the case where a 3-D image is to be displayed as a 2-D image. At best, Osaka discloses displaying a 2-D display using the 2-D data of the 3-D image based upon the condition of a predetermined mouse event. *See col. 17, lines 53-63.* Yet Osaka fails to disclose control information denoting which of the images used to configure the 3-D image is to be displayed instead of the 3-D image.

Therefore, at least because Osaka fails to teach or suggest each and every claimed element, independent claim 48 is distinguishable from the prior art. Dependent claim 49 is also distinguishable from the prior art at least due to its dependence from claims 48. Accordingly, Applicants respectfully request that the rejection of claims 48-49 under 35 U.S.C. § 102(b) be withdrawn.

### **CONCLUSION**

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders (Reg. No. 60,166) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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